

DOCKET SECTION

PRESIDING OFFICER'S
RULING NO. R97-1/106
MAR 9 2 38 PM '98

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING ON POSTAL SERVICE MOTIONS TO COMPEL RESPONSES TO INTERROGATORIES USPS/ANM-T1-26, 36, 41 AND 42

(March 9, 1998)

BACKGROUND

On February 20, the United States Postal Service submitted a motion to compel responses to two interrogatories, USPS/ANM-T1-26 and 36, served by the Service on January 27 and January 28, respectively. Motion of the United States Postal Service to Compel Responses to USPS/ANM-T1-26 and 36 (Motion I). On February 23, the Service submitted another motion to compel responses to interrogatories USPS/ANM-T1-41 and 42, served by the Postal Service on February 12. Motion of the United States Postal Service to Compel Responses to USPS/ANM-T1-41 and -42 (Motion II). On February 27, the Alliance of Nonprofit Mailers (ANM) filed its opposition to the Service's motions. Opposition of Alliance of Nonprofit Mailers to Motion of United States Postal Service to Compel Responses to Interrogatories USPS/ANM-T1-26, 36, 41 and 42 (Opposition).

The interrogatories concern the mail survey data summarized in the testimony of ANM witness Haldi. That survey involves instances where Standard A mailings were presented with nonprofit indicia, determined not to be mailable at nonprofit rates, but

nonetheless permitted to be entered as prepared. Interrogatories USPS/ANM-T1-26, 36, 41 and 42 read as follows:

USPS/ANM-T1-26. Please refer to Exhibit 1-ANM-T1 of your testimony, where you summarize the results of a survey conducted by ANM under your supervision. For each responding organization that mailed Standard A regular rate mail with a nonprofit indicia, please provide:

- a. the name of the organization;
- b. the organization's address;
- c. the number of pieces entered at regular rates with nonprofit indicia; and the name of the Postal facility(ies) where the mailing(s) were entered.

USPS/ANM-T1-36. Please provide the information requested in USPS/ANM-T1-26, for the survey responses you received since completing your testimony.

USPS/ANM-T1-41. Please provide all survey responses (i.e., to questions 1-10 as well as any additional comments given) for each respondent to the Alliance of Nonprofit Mailers survey of nonprofit organizations. Include any responses received since 12/30/97 and not reported in ANM-T-1.

USPS/ANM-T1-42. Please provide the FY1996 regular rate and nonprofit Standard(A) volumes for all mailers sent surveys, including which mailers responded to the survey and which did not respond.

In its Motions to Compel, the Postal Service maintains that the results of the survey are biased, as the survey is not representative of the mailers it seeks to represent. Motion I at 3. According to the Service, the survey instrument "appears to have been designed to elicit responses only from publications who were assessed Standard (A) commercial rates for certain mailings, when the mailers had intended to pay more favorable nonprofit rates." *Id.* Consequently, the Service argues that, in order to ascertain the magnitude of this bias, the information sought in the

interrogatories at issue — such as the identity of those mailers who responded — is necessary. *See Id.*

The Postal Service puts little stock in ANM's objection that revealing names and addresses of participating organizations would subject those organizations to some form of retaliation by the Service. Motion I at 2; Objection of Alliance of Nonprofit Mailers to Interrogatories USPS/ANM-T1-26 and -36 (February 6, 1998) (Objection) at 2. Nor is much credence accorded to ANM's contention that the release of identities would "chill" ANM's ability to obtain similar information in the future or breach the promised confidentiality of participants. Motion I at 2; Objection at 2. In fact, the Service pointedly notes that ANM's own witness, Dr. Haldi, has indicated that "it is impossible to identify how many nonprofit executives received the survey because it was copied and recopied by other 'umbrella' nonprofit organizations." ANM-T-1, Exhibit 1-ANM-T-1 at 2; Motion I at 2. It is thus unclear to the Postal Service as to how ANM could assure survey respondents of confidentiality, when even the number of respondents is unknown. Motion I at 2.

According to the Service, the apparent relevance and necessity of the sought information outweighs ANM's assertions of potential Service retaliation against survey participants and its "unsupported allegations of a pledge of confidentiality." Motion I at 4-5. As ANM witness Haldi substantially relies upon the survey results, and where the survey may be "irretrievably flawed by bias" to some unknown degree, that degree of bias should be identified in order for the Commission to gauge the appropriate weight it should place on the survey's results and witness Haldi's related assertions. *See Id.* at 4. Consequently, ANM's reliance on Presiding Officer's Ruling MC95-1/19 for the premise that the identity of survey respondents will not be compelled where the moving party's line of inquiry is speculative and the information sought has not been demonstrated to be relevant to the proceeding is misplaced.¹ Motion I at 3.

¹ In P.O. Ruling MC95-1/19, the National Newspaper Association (NNA) brought a motion to compel responses from the Postal Service identifying those publications deemed

In its Opposition to the Service's motions to compel, ANM notes that it has responded to the interrogatories at issue by providing copies of all survey responses, with the mailers' identities and the first three digits of their zip codes redacted on the grounds of confidentiality (Library Reference ANM-LR-1). Opposition at 2. ANM maintains that it possesses a substantial interest in keeping the survey respondents' identities confidential. *Id.* at 3. While acknowledging that the questionnaires do not specifically promise confidentiality of the responses, ANM recounts that virtually all of the survey recipients elicited subsequent promises from ANM,² as well as from the two outside nonprofit organizations which polled their own members, against disclosure of the survey recipients' identities to the Service. *Id.* at 4.

According to ANM, the survey respondents submit two reasons for their confidentiality concern: (1) that disclosure of the Post Office locations where Service employees had accepted mail bearing nonprofit evidencing of postage for entry at commercial rates could prompt the Service to retaliate against its own employees, thereby jeopardizing the mailers' relationships with those employees; and (2) that identification of the aforementioned individual mailers could allow the Service to retaliate against them by claiming back postage for past nonprofit mailings, or even by revoking the mailers' nonprofit permits. Opposition at 3-4. ANM maintains that these fears are genuine, regardless of how well-founded, and any breach of confidentiality resulting from the disclosure of the respondents' identities could potentially chill ANM's ability to collect meaningful data from nonprofit mailers for future surveys. *Id.* at 6.

likely to be eligible for a new subclass proposed by the Service. P.O. Ruling MC95-1/19 at 4-5. The ruling denied the motion on the grounds that NNA's line of inquiry called for speculation, and that NNA had failed to demonstrate that the identities requested bore relevance to the proceeding's issues. *Id.* at 6. The Presiding Officer particularly noted that the Service "did not rely on the identity of any of the survey participants, or the publications identified in the mailing statements, in assessing eligibility." *Id.*

² ANM offers the affidavit of its Executive Director, Neal Denton, to that effect. Opposition at 4; Declaration of R. Neal Denton (Declaration) at 1-4.

ANM further contends that the Postal Service has failed to identify any substantial interest for revealing the survey respondents' identities. Opposition at 7. The Service's claim of survey bias is based on the following hypothesis, according to ANM: that the sample of mail represented by the survey respondents, as opposed to *all* nonprofit mail in Fiscal Year 1996, is "overweighted with mail entered at [S]tandard (A) nonprofit rates but later forced to pay back postage based on commercial rates." *Id.* However, provision of the identities of the survey respondents is neither sufficient nor necessary for testing of the theory. *Id.* Rather, ANM maintains that Postal Service must compare: "(1) the frequency of back postage payments reported by the survey respondents with (2) the frequency of back postage payments made by the entire universe of nonprofit mailers, or a representative sample of that universe (e.g., all nonprofit mail entered within the three-digit ZIP codes covered by ANM's survey)." *Id.* The individual mailers' identities thus become irrelevant, as the Service may directly determine the extent of the back postage phenomenon with such data. *Id.* And without such information on the "distribution of observations," ANM argues, the Service is powerless to produce any relevant or probative evidence on the representativeness of ANM's sample survey, even with the mailers' identities revealed. See *Id.* at 7-8.

Thus, it is ANM's position that the Service is essentially in exclusive possession of the system data needed to assess the extent and significance of the IOCS/RPW mismatch.³ Opposition at 7-8. As the Service has independent means of producing the relevant data without breaching the survey respondents' confidentiality, balancing the parties' respective interests results in ANM's favor- against disclosure. *Id.*

³ That information includes data on all nonprofit mail pieces entered in Fiscal Year 1996 which have been subject to back postage payments since then, as well as mailing statements for every piece of mail entered by nonprofit mailers at commercial rates in the U.S. Opposition at 8.

DISCUSSION

The importance of market research in developing rate and classification proposals is well-recognized, as is the impact of confidentiality pledges upon the gathering of relevant information from industry participants. See P.O. Ruling MC95-1/19 at 1-2. While these interests in protecting sensitive material do not serve as an absolute bar against disclosure, they must be balanced against participants' legitimate discovery rights. *Id.*

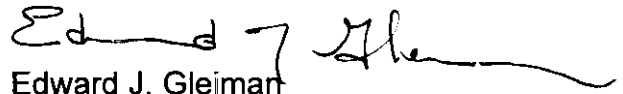
In this instance, ANM's argument is persuasive. ANM did supply participants with a redacted version of the completed survey forms in library reference ANM-LR-1. Review of these survey responses wholly substantiates ANM's claim that provision of names and addresses of respondents would be of limited value to the Service in its efforts to determine the degree of any bias in the survey design and results. Moreover, when that limited use is considered in light of the confidentiality pledges by ANM and associated organizations, as well as the respondents' concerns about Service retaliation, the balance is more than tipped in ANM's favor.

The Postal Service's intent to uncover any existing bias in the survey's results, and thereby help the Commission gauge the appropriate weight to accord to the study, may be commendable. However, the Service fails to explain in any detail how this task would be accomplished. There is no discussion on the Postal Service's part regarding how the information requested (such as the total regular rate volume for survey respondents) will be employed. Furthermore, the Service already has access to data that should enable it to present a representative survey (however limited) of its own.

In light of these considerations, the Postal Service's motions to compel responses to USPS/ANM-T1-26, 36, 41 and 42 are denied.

RULING

The Motions of the United States Postal Service to Compel Responses to USPS/ANM-T1-26, 36, 41 and 42, filed on February 20 and 23, 1998, are denied.


Edward J. Gleiman
Presiding Officer